

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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James L. Colvin, et al.,	)	No. 18-1110
	)	
Petitioners	)	
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**RESPONSE OF THE FEDERAL COMMUNICATIONS COMMISSION TO  
PETITION FOR WRIT OF MANDAMUS**

The Federal Communications Commission hereby responds to Petitioner James Colvin's application to enforce an administrative agency order, which this Court has construed as a petition for writ of mandamus. Invoking rate caps for inmate calling services that the Commission adopted in 2015 and revised in 2016, Mr. Colvin seeks refunds from Securus Technologies, Inc., which provides inmate calling services in the Louisiana prison where he is incarcerated. Pursuant to a series of decisions from this Court in prior cases, the rate caps that Mr. Colvin invokes never took effect and have been vacated. The federal rate caps for inmate calling services that are currently in effect (and have been throughout the relevant period) are \$0.21 per minute for interstate calls placed using pre-funded accounts and \$0.25 per minute for interstate collect calls; there is no federal rate cap in effect for intrastate or international calls. Because the \$0.21 per minute rate about which Mr. Colvin complains is permissible under the governing rate caps, there is no basis for the relief he seeks.

## BACKGROUND

Inmate calling services are telephone services for incarcerated persons that companies provide under contract with the operators of correctional facilities. In a series of orders beginning in 2013, the FCC adopted rate caps (and related rules) governing such services. Various parties challenged each of the FCC's orders before this Court. The Court first stayed, and then vacated, all but one set of the FCC's rate caps: those limiting rates for interstate inmate calling services to \$0.21 per minute for pre-funded calls and \$0.25 per minute for collect calls.

### **A. 2013 Inmate Calling Order and Resulting Stay**

The Commission first adopted rules governing interstate inmate calling services in 2013. *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013) (*2013 Inmate Calling Order*). Those rules included rate caps that the Commission characterized as “interim” because the agency was contemporaneously collecting further information with which to craft a more permanent set of rules. The rules required inmate calling providers to base interstate rates on their costs, and also capped those rates at \$0.21 per minute for pre-funded interstate calls and \$0.25 per minute for interstate collect calls. *Id.* ¶ 48.

Various parties challenged the *2013 Inmate Calling Order* in cases that this Court consolidated as *Securus Technologies, Inc. v. FCC*, No. 13-1280 et al. Some

of the *Securus* petitioners sought stays, or partial stays, pending judicial review. In response, this Court stayed the Commission's requirement that, even when falling within the rate caps, inmate calling providers' rates be cost-based. But except as to the cost-based requirement, the Court allowed the rate caps to take effect. *Securus*, No. 13-1280 et al. 1 (D.C. Cir. Jan. 13, 2014) (per curiam). The Court subsequently placed the cases challenging the *2013 Inmate Calling Order* into abeyance, allowing the ongoing administrative proceedings to run their course. *Securus*, No. 13-1280 et al. 1 (D.C. Cir. Dec. 16, 2014) (per curiam).

**B. *2015 Inmate Calling Order* and Resulting Stay**

On November 5, 2015, the Commission released an order adopting a more comprehensive set of inmate calling rules. *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015) (*2015 Inmate Calling Order*). Among other things, the Commission adopted lower rate caps (for most categories of calls) and applied those lower limits to both interstate and intrastate calls. *See* 47 C.F.R. § 64.6010. The Commission continued in effect the existing interim rate caps—which were to “sunset upon the effectiveness of the [revised] rates established in section 64.6010”—and extended those interim rate caps to intrastate as well as interstate calls. *Id.* § 64.6030; *see 2015 Inmate Calling Order*, 30 FCC Rcd at 12921, App'x (adopting 47 C.F.R. § 64.6000(j), which revised the definition of

“Inmate Calling Service” to remove its former limitation to interstate calls).

Neither set of rate caps that the Commission adopted applied to international calls.

*See id.* ¶ 73 & n.220.

This Court consolidated challenges to the *2015 Inmate Calling Order* as *Global Tel\*Link v. FCC*, No. 15-1461 et al. Some of the *Global Tel* petitioners sought stays pending judicial review, including stays of the revised rate caps in Section 64.6010. This Court stayed those rate caps before they took effect. *Global Tel*, No. 15-1461 et al. 1–2 (D.C. Cir. Mar. 7, 2016) (per curiam). The Court also stayed the interim rate caps of Section 64.6030 as applied to intrastate calls. *Global Tel*, No. 15-1461 et al. 1 (D.C. Cir. Mar. 23, 2016) (per curiam). But no party in *Global Tel* challenged or sought to stay the interim rate caps as to interstate calls. Accordingly, the rates for interstate inmate calling services remained subject to those caps.

### **C. 2016 Inmate Calling Order and Resulting Stay**

While briefing was underway in *Global Tel*, the Commission issued an order reconsidering the *2015 Inmate Calling Order. Rates for Interstate Inmate Calling Services*, Order on Reconsideration, 31 FCC Rcd 9300 (2016) (*Reconsideration Order*). On reconsideration, the Commission amended the 2015 version of Section 64.6010 of the agency’s rules to increase the 2015 rate caps. For pre-funded calls from prisons (both interstate and intrastate), the revised rate cap was \$0.13 per

minute. For collect calls from prisons (interstate and intrastate), the revised rate cap was to begin at \$0.16 per minute on the effective date of the *Reconsideration Order*, then decrease to \$0.15 per minute as of July 1, 2017, and \$0.13 per minute as of July 1, 2018. *Id.* ¶ 3. The *Reconsideration Order* had no effect on the interim rate caps of Section 64.6030.

Several parties challenged the *Reconsideration Order* in cases that this Court consolidated as *Securus Technologies, Inc. v. FCC*, No. 16-1321 et al. (*Securus II*). Before the revised rate caps could take effect, the Court granted petitioners' motions to stay them. *Securus II*, No. 16-1321 et al. 1 (D.C. Cir. Nov. 2, 2016) (per curiam). The Court then, sua sponte, placed *Securus II* in abeyance pending resolution of the *Global Tel* cases challenging the 2015 rates. *Id.* at 1–2.

#### **D. Merits Decision in *Global Tel* and Subsequent Procedural Orders**

This Court decided the *Global Tel* cases in June 2017. *Global Tel\*Link v. FCC*, 866 F.3d 397 (D.C. Cir. 2017). In doing so, the Court vacated the 2015 rates, holding that the Commission lacked authority to impose caps on intrastate inmate calls, *id.* at 408–12, and that the Commission's reasoning behind the 2015 rate caps was arbitrary and capricious, *id.* at 412–15. Rehearing en banc was denied. *Global Tel*, No. 15-1461 et al. 1 (D.C. Cir. Sept. 26, 2017) (per curiam).

After the Court denied rehearing en banc in *Global Tel*, parties on all sides of the *Securus* and *Securus II* litigation (both of which had remained in abeyance)

submitted a joint motion addressing those cases. The parties urged the Court to dismiss *Securus* as moot, explaining that the *2015 Inmate Calling Order*, to the extent not vacated in *Global Tel*, superseded the *2013 Inmate Calling Order*. Joint Mot. 7 (*Securus* Doc. #1703273). The movants jointly sought summary vacatur of the *Reconsideration Order* at issue in *Securus II*, which they agreed “set [rate caps] directly premised upon the vacated rates and methodology adopted in the *2015 [Inmate Calling] Order*.” *Id.* at 6. The movants underscored, however, that the *Global Tel* decision did not affect “the *2015 [Inmate Calling] Order*’s recodification of the interim interstate rate caps” in Section 64.6030. *Id.* at 7. “[W]ith respect to interstate calls only,” the joint motion explained, those rate caps “remain in effect.” *Id.*

Pursuant to the joint motion, this Court dismissed the cases concerning the *2013 Inmate Calling Order* as moot, *Securus*, No. 13-1280 et al. 1 (D.C. Cir. Dec. 21, 2017) (per curiam), and summarily vacated the *Reconsideration Order*, *Securus II*, No. 16-1321 et al. 1 (D.C. Cir. Dec. 21, 2017) (per curiam).

### **ARGUMENT**

#### **THE PETITION SHOULD BE DENIED BECAUSE THE RATES ABOUT WHICH MR. COLVIN COMPLAINS FALL WITHIN THE ONLY RATE CAPS NOW IN EFFECT.**

The remedy of “mandamus is drastic; it is available only in extraordinary situations . . . [and] is hardly ever granted.” *In re Cheney*, 406 F.3d 723, 729 (D.C.

Cir. 2005) (internal quotation marks omitted). “[T]hose invoking the [C]ourt’s mandamus jurisdiction must have a clear and indisputable right to relief.” *Id.* (internal quotation marks omitted).

Under this Court’s prior decisions, the only federal rate caps for inmate calling services in effect are those codified in Section 64.6030 of the Commission’s rules, 47 C.F.R. § 64.6030, which now apply solely to interstate domestic calls. The more stringent rate caps codified and amended in Section 64.6010 of the rules were stayed before they took effect and thereafter were vacated in *Global Tel*. As a result, the interim rate caps in Section 64.6030 have not “sunset.” But those caps apply solely to interstate calls, because this Court first stayed their applicability to intrastate calls, *Global Tel*, No. 15-1461 et al. 1 (D.C. Cir. Mar. 23, 2016), then held that the Commission lacked authority to cap rates for intrastate inmate calling services, *Global Tel*, 866 F.3d at 412. There are thus no federal rate caps applicable to intrastate inmate calls.

Mr. Colvin alleges that Securus Technologies and the Louisiana Department of Public Safety and Correction charge “twenty-one cents per minute, plus state and federal tax for both interstate and intrastate calls,” “national and international”—presumably for calls placed from Rayburn Correctional Center, the Louisiana prison listed as Mr. Colvin’s mailing address. Taking that allegation on its face, there is no basis for this Court to conclude there has been a violation of the

governing FCC rate caps. The FCC has no operative rate caps governing intrastate or international inmate calling services. And the rate that Mr. Colvin cites is equal to the rate cap for pre-funded interstate calls and less than the rate cap for interstate collect calls. 47 C.F.R. § 64.6030.<sup>1</sup> In short, Mr. Colvin has no ground for—much less a “clear and indisputable right” to—the relief he seeks.

### CONCLUSION

The petition for writ of mandamus should be denied.

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<sup>1</sup> The FCC’s rules permit inmate calling providers to pass through government-mandated taxes and fees as end-user charges. *See* 47 C.F.R. § 64.6070; *2015 Inmate Calling Order* ¶¶ 191–192. Thus, Mr. Colvin is not entitled to relief based on his allegation that Securus charges customers state and federal taxes in addition to the \$0.21 per minute charge.



Respectfully submitted,

/s/ Sarah E. Citrin

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September 14, 2018

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s/ Sarah E. Citrin

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**CERTIFICATE OF FILING AND SERVICE**

I, Sarah E. Citrin, hereby certify that on September 14, 2018, I filed the foregoing Response of the Federal Communications Commission to Petition for Writ of Mandamus with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Some of the participants in the case, denoted with asterisks below, are not CM/ECF users. I certify further that I have directed that copies of the foregoing document be mailed by First-Class Mail to those persons.

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